IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6329 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOPAL SUBODHRANJAN SHAH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 28/08/2000

ORAL JUDGEMENT

This is a writ petition filed under Article 226 of the Constitution of India challenging the legality and validity of an order of detention dated 4th December, 1999 passed by respondent no.2 (Annexure : A).

2. The detaining authority passed an order of detention under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act") branding the detenu as 'immoral traffic offender' within the meaning of Sec.2(g) of the Act.

2.1 In the papers with regard to grounds of detention, the detaining authority has relied on only one criminal case lodged against the detenu. As per the case papers, that criminal case was lodged in Vatva Police Station and it was registered as CR. II 3376/99. The detaining authority has also placed reliance on and took into consideration the statements of two un-named witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. Out of that two statements of witnesses, one was recorded on 2nd December, 1999 and another was recorded on 3rd December, 1999. That both the statements were verified by detaining authority on 4th December, 1999 and on that very day, the detaining authority passed an order of detention with respect to the detenu, which is challenged in this writ petition.

3. Mr.M.R.Prajapti has submitted that on 4th December, 1999, the detaining authority passed an order of detention which is challenged in this writ petition. It was served on the detenu on that very day i.e. 4/12/1999 and as on this day, he was in Jail. He has argued that looking to the facts and relevant dates of statements and date of verification thereof and the date of passing an order of detention, it is physically not possible for any person to apply his mind on the very same day. For this, he has placed reliance on the case of KALIDAS CHANDULAL KAHAR VS. STATE OF GUJARAT AND OTHERS, reported in (1993) 2 34(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising privilege under Sec.9(2) of the Act. Looking to the papers which relate to ten prohibition cases and two statements of anonymous witnesses which are relied on by the detaining authority, it was not possible to apply his mind to verify the statements more particularly for scrutiny of the facts stated therein. The detaining authority is expected to verify the statements on the point as to whether that statements are genuine or not and whether persons of whose statements are recorded are fictitious persons or not and whether that statements are bogus or not. For this type of verification, some time is necessary and for that exercise to be made by the detaining authority, one has to go for perusal of these statements carefully.

5. Here in this case, none of the respondents has filed affidavit-in-reply, meaning thereby, they have not controverted the case of the petitioner. This Court has in Special Civil Application No.6322 of 1999 decided on 11/2/2000 deprecated the practice of not filing affidavit-in-reply in such type of cases. Thus, it appears that the respondents have not controverted the grounds under which the said order of detention has been attacked and challenged in this Writ Petition. Under the circumstances, the order of detention creates doubt about application of mind on the part of the detaining authority.

6. In view of what is stated hereinabove, this Writ Petition deserves to be allowed and accordingly it is allowed. The order of detention dated 4th December, 1999 passed by respondent No.2 with respect to detenu is quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be further detained for any other criminal case or Procedings. Rule is made absolute accordingly. Direct Service is permitted.

28/8/2000. (H.H. Mehta, J.)
ccshah